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ARTICLE

SOCIAL PROTECTION INNOVATION AND CHALLENGES IN CHINA AND AFRICA: SELECTED COMPARATIVE PERSPECTIVES

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Abstract This contribution concerns social protection innovation in China and Africa as regards aging populations and social security extension to informal workers. China has adopted and extended several contributory schemes and non-contributory arrangements. Yet, the country faces significant challenges in terms of a funding gap, high urban contribution rates, inadequate benefits and an existing benefit gap, inequality in the treatment of public versus private sector workers, and insufficient migrant worker coverage and portability arrangements. While population aging is less of a problem in most African countries, African retirement arrangements experience challenges in relation to funding limitations, and a host of shortcomings as regards contributory schemes and non-contributory arrangements.

China has seen a decline in the numbers of those who work in the informal economy. Ensuring proper coverage of such workers have included strengthened labor market regulation: An integrated approach is called for. In Africa, access by these workers to social security is limited. Attempts to achieve coverage extension have included conceptual developments, institutional initiatives, tailor-made design modalities, and a range of supportive arrangements (such as access to finance and to markets). All these developments reflect a new appreciation of the leading role of the state in the provisioning of social security.

Keywords social protection, social security, aging, informal workers, international standards

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INTRODUCTION

Both China and Africa have seen significant social security coverage expansion in the

areas of, firstly, aging populations and, secondly, social protection for informal workers. China has introduced and extended several contributory schemes and non-contributory arrangements in response to the increasing problem of aging. For this purpose it has adopted a range of legal instruments. These developments have taken place in the wake of significant challenges, particularly in relation to a funding gap, high urban contribution rates, inadequate benefits and an existing benefit gap, inequality in the treatment of public versus private sector workers, and the need to enhance migrant worker coverage and portability arrangements. While Africa has not yet been exposed to the phenomenon of aging to the same extent as China, the retirement arrangements of African countries have experienced challenges in relation to funding limitations, and a host of shortcomings as regards contributory schemes and non-contributory arrangements.

Social security for informal (economy) workers appears to be a challenge both in China and particularly in Africa, in view of the fact that the sheer size of informal economy employment exceeds work in the formal employment sphere in many African countries. China, on the other hand, has seen a decline in the numbers of those who work in the informal economy. Steps taken by China to ensure proper coverage of such workers have included strengthened labor market regulation. There are several reasons why in the African context access by these workers to social security is limited. Chief amongst these is the focus of contributory schemes on those who work for an identifiable employer in formal employment relationships. Non-contributory schemes are effectively restricted to certain categories of poor people in need of support. Yet, various attempts have been made to achieve coverage extension — through conceptual developments, institutional initiatives, tailor-made design modalities, and a range of supportive arrangements (such as access to finance and to markets).

This contribution concerns itself with these developments and certain innovative steps taken in China and Africa to respond to the coverage extension challenges. For this purpose, it considers developing international and regional instruments and standards, as well as constitutional prescripts in some countries and good practice in comparative jurisdictions. In this context, it also reflects on the role of the state in the provisioning of social security, and the need to build on equal and equitable outcomes in order to ensure that a proper policy-based and statutorily mandated social security framework is in place.

I. THE VALUE OF HUMAN RIGHTS AND DEVELOPMENTAL PERSPECTIVES — CHINESE AND AFRICAN RESPONSES

A. International Framework

This contribution deals with social protection innovation in China and Africa, and primarily in two key areas of significant policy and practical importance in these geographical domains, namely, aging populations and the extension of social protection to informal workers. Of course, this discussion should be seen against the background of

developments internationally, and the increasing recognition of social protection, and in particular social security as a human right. This is already much evident from the provisions of Article 22 of the 1948 United Nations (UN) Universal Declaration of Human Rights,[1] and from a host of other international instruments and their accompanying standards. Of specific importance is Article 9 of the 1966 UN International Covenant of Economic, Social and Cultural Rights, which stipulates that "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." The right to social security in the event of among others old age is specifically recognized in Article 25(2). This instrument has been ratified by China in 2001 and by the vast majority of African countries.[2] And yet, guaranteeing basic social protection remains a major development challenge in many countries, with 73% of the world's population living without access to comprehensive social protection.[3] In sub-Saharan Africa this figure is as high as 90%.[4]

More recently, the world-wide Social Protection Floor debate spearheaded by the UN, culminated in International Labour Organization (ILO) Recommendation 202 of 2012, with its emphasis on nationally defined floors of social protection and a minimum package of interventions for the vulnerable — aimed at preventing or alleviating poverty, vulnerability and social exclusion.[5] The Recommendation focuses on ensuring access to essential services and providing a minimum income and livelihood security; it provides among others for basic income security, at least at a nationally defined minimum level, for older persons,[6] and emphasizes the need for social inclusion of as well as the extension of social security coverage to persons in the informal economy.[7] It is important to note that the adoption of this Recommendation with its world-wide appeal has

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[1] "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Of relevance also is Art. 25(1), which provides for the "right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The entitlement of motherhood and childhood to special care and assistance is recognized in Art. 25(2).

[2] The instrument has been ratified or acceded to by 165 countries, available at http://indicators.ohchr.org/ and https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en (last visited Jul. 15, 2017).

[3] United Nations Development Programme (UNDP), *Social Protection for Sustainable Development: Dialogues between Africa and Brazil*, at 38 (2016), available at https://riopluscentre.org/sp4sd/ (last visited Dec. 3, 2016).

[4] ILO, *World Social Security Report 2010/2011* (2011).

[5] ILO, Recommendation 202 concerning National Floors of Social Protection.

[6] Id. Para. 5(d).

[7] Id. Paras. 3(e) and 15 respectively.

significant consequences from a human rights perspective, since it[8]

- regards social security no longer as merely a state duty, but uses a rights-based approach as its premise;
- confirms the state's final responsibility for social security (also for the aged), rather than restricting state intervention to (only) direct responsibility for the provision of social security; and
- instead of (merely) imposing minimum requirements on states, highlights the importance and applicability of universal principles, including:[9]
  - universality of protection, based on social solidarity;
  - entitlement to benefits prescribed by national law;
  - adequacy and predictability of benefits;
  - non-discrimination, gender equality and responsiveness to special needs;
  - social inclusion, including of persons in the informal economy;
  - respect for the rights and dignity of people covered by social security guarantees;
  - progressive realisation, including by setting targets and time frames;
  - solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes;
  - consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems; and
  - transparent, accountable and sound financial management and administration.

Finally, mention should be made of the importance of the recently adopted UN-inspired Sustainable Development Goals. These goals aspire to a world without poverty, of decreased inequality and universal access to social protection by 2030. Social protection is an important component of the Sustainable Development Goals, as is evident from

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[8] Gijs Vonk, *The 2012 Recommendation concerning National Floors of Social Protection: The Human Rights Approach to Social Security in ILO Wrapping Paper*, 4(1) International Journal of Social Security and Workers Compensation, 52–59 (2012–2013).

[9] See fn. 5, Para. 3. Other universal principles enumerated in Para. 3 include:

- financial, fiscal and economic sustainability with due regard to social justice and equity;
- coherence with social, economic and employment policies;
- coherence across institutions responsible for delivery of social protection;
- high-quality public services that enhance the delivery of social security systems;
- efficiency and accessibility of complaint and appeal procedures;
- regular monitoring of implementation, and periodic evaluation;
- full respect for collective bargaining and freedom of association for all workers; and
- tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

- Goal 1 (No poverty) — sub-goal 1.3: "Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable."
- Goal 3 (Good health and well-being) — sub-goal 3.8: "Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all."
- Goal 5 (Gender equality) — sub-goal 5.4: "Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate."
- Goal 10 (Reduce inequality within and among countries) — sub-goal 10.4: "Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality."

B. Chinese Responses

The ILO has noted China's remarkable progress in social protection expansion, through the introduction or subsidization of social protection programs. This has been cemented by the decision adopted by the 17th Party Congress, to achieve a comprehensive and integrated social protection system by 2020.[10] Significant steps have been taken, including the introduction of among others:[11]

- Two minimum living standard guarantee schemes, providing income security to both urban and rural residents maintaining a revenue level below the locally-defined income threshold;
- Two new health insurance programs, targeting the rural and economically inactive populations, in addition to the long-existing health insurance scheme for the urban working population, covering already (in 2009) 1.2 billion out of 1.3 billion nationals; and
- Two pilot state pension schemes — covering the rural and urban population respectively.

It has been noted that the long-term development strategy has shifted from one based strictly on economic growth, to one centered upon a "harmonious society." This new development strategy seeks to strike and maintain a balance between both economic growth and social development, between human needs and environmental health and between today's generation and tomorrow's:[12]

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[10] Mark C Dorfman, Robert Holzmann & Philip O'Keefe et al., *China's Pension System: A Vision* (World Bank), at 17 (2013).

[11] See ILO, *Social Protection Floor Initiative — SPF Country Brief: China*, (2010).

[12] Id.

Social protection is therefore now widely considered as both a social and economic imperative. Basic social protection for all in need has been formally adopted as a long-term objective in order to ensure that all the elderly have basic income security, all the sick people receive medical care, all the children enrol in school, all the workers are paid, all the families have a place to live and all the poor get assisted. As such, the Chinese government has continuously and significantly increased its budget allocation to social protection.

At least since 1978, there has been an alignment of the social security system with the socialist market economy. The key elements of the reformed system was confirmed by the 15th Party Congress to include pensions, healthcare, unemployment insurance and social relief.[13] The legal endorsement of the reform, as far as contributory social security is concerned, is found in the Social Insurance Law of China of 2011, according to which the State shall establish a social insurance system, including basic endowment (retirement/pension) insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance, in order to protect the rights of the public to receive material assistance from the State and the society when they are old, sick, work-related injured, unemployed and pregnant.[14] Increasingly, since 1985, a multi-dimensional and integrated social security system has been established in China.[15] This has been supported by a major extension of coverage, as well as coverage and funding modalities: Whereas coverage was earlier on focused on civil servants and publicly owned enterprises, the new, reformed dispensation saw the non-publicly owned enterprises also covered; crucial steps were taken to expand coverage to both urban and rural workers; there has been a transition from self-insurance to social insurance, based on principles of social mutuality and social pooling; and from State responsibility to tripartite responsibility.[16] In fact, as far as the latter is concerned, the key reforms entailed the reduction of the State's monetary contribution and an increase in employee contribution, while the employer contribution constituted the main source of social security funds.[17] The dramatic expansion of the personal sphere of social insurance coverage in China has been summarized as follows:[18]

..., for a long time, some major social insurance systems that have been carried out in China were only targeted at State organs, public institutions and enterprises owned by the

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[13] LI Jianfei, *Labor Law and Social Security Law of China*, China Renmin University Press (Beijing), at 253 (2014).

[14] Id. at 268–269.

[15] Id. at 153. A range of developments occurred between 1985 and 1990, including the establishment of unemployment insurance in 1986; pensions reforms as from 1991, based on the principle of social pooling; a national unified employee injury benefit system as from 1992; public healthcare reforms from 1989; and the introduction of persons with disabilities as from 1990.

[16] Id.

[17] Id. at 260.

[18] Id. at 256–257.

whole people, while in enterprises of town collective ownership, such systems were generally implemented on a reference basis. Laborers in other forms of economic organizations even have not been completely covered by the social insurance systems, and there was no unified benefits standard for them. This kind of social insurance system completely deviated from the principles of unity and equality in current market economy. However, the Labor Law of China has changed this and extended the scope of social insurance to the laborers in all enterprises, public institutions, State organs, social organizations and individual businesses within the territory of the People's Republic of China, which not only overcomes the previous defects of small coverage and different standards, but also completely accords with the requirements of the socialist market economy system.

The Constitution of the People's Republic of China provides the overall and fundamental basis for the provision of social security in China.[19] Article 45 stipulates that "Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill or disabled. The State develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right." Specifically as far as retirement provision is concerned, according to Article 44 of the Constitution, "The State applies the system of retirement for workers and staff members of enterprises and institutions and for functionaries of organs of State according to law. The livelihood of retired persons is ensured by the State and society."

C. African Developments

1. Overall Context. — Social protection systems in Africa have largely developed in the colonial era, to serve the labor market context established by the colonial masters and the formalized workforce. The systems are largely contributory in nature and, with notable exceptions, not tailored to meet the needs of the majority of people and workers, as many of these fall outside the formal employment context and the reach of contributory schemes. Except for Southern Africa, non-contributory arrangements are still weakly developed and essentially donor-driven. As has been suggested:[20]

SP systems in SSA countries are generally weak with low coverage, both in terms of the reached population and covered risks. In most of the countries, SP programmes have been developed on an ad hoc basis, often at the initiative of donors, without being part of a coherent overall policy framework. SP in many countries is, however, informed by a range of often un-coordinated sectoral policies, in critical areas such as early childhood, youth

[19] The references to Arts. 45 and 44 of the Constitution below, have been taken from the version of the PRC Constitution located on the official website of the State Council of the People's Republic of China, available at http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987458.htm (last visited Dec. 20, 2016).

[20] Marius Olivier, Francis Andrianarison & Maria McLaughlin, *Study on Social Protection in Sub-Saharan Africa*, Report commissioned by the European Commission, at 24 (2013). "SP" stands for "Social Protection" and "SSA" for "sub-Saharan Africa."

unemployment, disability, gender and the aged. Until recently, most of the countries had no national SP policy or strategy to guide the development of programmes and resource allocation. This picture, however, is fast changing.

Especially in sub-Saharan countries are generally weak with low coverage, both in terms of the reached population and covered risks.[21] In most of the countries, social protection programs have been developed on an *ad hoc* basis, often at the initiative of donors, without being part of a coherent overall policy framework. Social protection in many countries is, however, informed by a range of often uncoordinated sectoral policies, in critical areas such as early childhood, youth unemployment, disability, gender and the aged. Until recently, most of the countries had no national social protection policy or strategy to guide the development of programs and resource allocation.[22] This picture, however, is fast changing.

A recent review of social protection programs in Africa undertaken by United Nations Development Programme (UNDP) has shown that African governments still face complex and interconnected challenges in moving to a more comprehensive and transformative coverage, even in the wake of sustained economic growth and in-principle enhanced fiscal ability.[23] Major poverty challenges remain, especially in light of the region's rapid population growth: A recent World Bank publication indicates that the share of poor people in Africa who fall into poverty is about the same as the share of poor people who move out of poverty.[24] Although the share of poor Africans fell from 57% in 1990 to 43% in 2012, many more people are poor because of population growth: more than 330 million in 2012, up from about 280 million in 1990.[25] Many of those who are poor eke out a living in the informal economy, and remain largely excluded from the purview of social security.

And yet, significant progress has been made.[26] In particular, there is increasingly appreciation of the importance of pluralistic and multi-pillar approaches to effectively address social risks in sub-Saharan Africa particularly and Africa generally. Contributory and non-contributory arrangements are combined to make sure that adequate protection is

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[21] See ILO, fn. 4 at 2, 7, 28, 29, 31.

[22] It is mostly (but subject to exception) post-conflict and fragile states (*e.g.* Burundi, Côte d'Ivoire, Guinea Bissau and South Sudan) that currently have no social protection policy framework in place. In addition, there are also no social protection frameworks in countries with one party/autocratic regimes, such as Eritrea and Gambia, as well as resource rich Equatorial Guinea and Sudan, and in a range of other countries, including Zimbabwe, Mauritius, Seychelles and also South Africa.

[23] See UNDP, fn. 3.

[24] Kathleen Beegle, Luc Christiaensen & Andrew Dabalen et al., *Poverty in a Rising Africa*, World Bank, at 74 (2016).

[25] Id. at xi–xii.

[26] See Olivier, Andrianarison & McLaughlin, fn. 20 at 27–38, on which this part partly relies.

provided, and that coverage is extended to an expanding number of beneficiaries. This is true especially of the areas of health care coverage and old age provision.

2. Contributory Schemes.[27] — Most middle-income countries in Africa have contributory social security arrangements of a public nature which are, however, limited in terms of personal sphere of coverage, and range and quality of benefits. The general pattern is that low-income developing countries in particular currently lack properly developed contributory arrangements, especially of a public nature, although some change is discernible. Social insurance schemes are operational in the public and formal private sectors of most African countries, though coverage remains limited to 6–20% (despite notable exceptions and recent examples of significantly expanded coverage) of the work force and generally includes a restricted range of social security benefits only, in particular old age pensions, work-related survivor and in some cases disability pensions, and employment injury benefits.

However, several factors inhibit the effectiveness of contributory arrangements. One of these relates to limited coverage, as is evident from the earlier quoted figure. Coverage remains largely focused on those employed in the formal economy, within the framework of an existing employment relationship — effectively excluding the majority of those who work in Africa, as they are not employed in the formal economy. This specifically affects workers in the informal economy. Another challenge concerns restricted public schemes providing for key social contingencies. In the absence of appropriate public schemes arranging access to a range of social security benefits, reliance has to be placed on either employer liability to pay (or insure for the payment of) benefits (*e.g.* in the case of sickness, maternity and employment injury benefits), or on occupational schemes or private arrangements (especially in the area of retirement and risk-related benefits, and at times medical care). Occupational and private schemes, although increasingly popular and present in many African countries, are often not well-regulated and suffer from challenges relating to limited coverage (usually they attract only earners at the higher end of the income spectrum), high costs and (at times) poor quality of benefits. Also, in most countries public, occupational and private arrangements are not properly aligned from the perspective of a multi-tiered framework of provision and protection.

3. Non-Contributory Arrangements. — The experience in African countries with the establishment of non-contributory arrangements has been diverse and is fast changing — especially in the form of conditional and unconditional cash transfers. Only a few countries have developed sizeable non-contributory social assistance schemes or comprehensive basic social protection interventions — including Gabon, Mauritius, Seychelles and South Africa. Where such schemes have been successfully implemented,

[27] Id. at 28–29.

the achievements have often been remarkable, with significant impact on poverty alleviation in the direct and distributional sense (especially at the household level), the strengthening of health and educational indicators, improvement of well-being, and support of small-scale economic activities.[28] The impact of the social assistance system in South Africa (where 17 million of the approximately 55 million residents are reliant on social assistance grant support) can be compared with that of similar large-scale programs in Brazil and Mexico. In fact, the Child Support Grant in South Africa is regarded by the World Bank as one of top five programs world-wide (as is the case with China's *dibao* Program) and the largest social safety net program on the African continent, covering more than 12 million beneficiaries.[29] Also, large-scale public works programs have been implemented in countries such as Ethiopia, Ghana and South Africa.[30]

However, in those countries where they exist, these schemes are not well-aligned with exit and graduation strategies, and with links to labor market participation. And yet, while they may not in their current format and orientation be aimed at self-sustainability, and despite other challenges relating to among others targeting,[31] these schemes play a crucial role in effectively addressing poverty and improving quality of life.

4. Legal and Policy Frameworks. — These developments on the African continent are supported and informed by several instruments and interventions at the continental, sub-regional and national level.

Continental level: African Union (AU)

At the continental level, social protection has been embedded in a host of recent instruments and accompanying standards, programs and strategies, including:

- The 2004 (and now in particular the revised 2014) Declaration on Employment,

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[28] World Bank, *Social Safety Nets in Africa — A Review of the Experience in 20 Countries* (Draft), World Bank, at 9 (Sep. 2012). See also ILO, *Social Security and the Rule of Law*, at 85, Para. 202 (2011). The World Bank, *(6th) South African Economic Update Report*, at 3 (2014) has this to say: "South Africa uses its fiscal instruments very effectively, achieving the largest reductions in poverty and inequality of the 12 middle-income countries. As a result of South Africa's fiscal system, some 3.6 million people are lifted out of poverty, measured as those living on less than $ 2.50 a day (in purchasing power parity dollars). The rate of extreme poverty is cut by half. The share of the population living on $ 1.25 a day or less falls from 34.4 percent to 16.5 percent, reflecting the impact of cash transfers and free basic services net of taxes."

[29] Ugo Gentilini, Maddalena Honorati & Ruslan Yemtsov, *The State of Social Safety Nets*, *2014*, World Bank, at 11–12 2014). See South African Social Security Agency (SASSA), *Fact Sheet: Issue no 11 of 2016 (30 November 2016) — A Statistical Summary of Social Grants in South Africa*, available at http://www.sassa.gov.za/index.php/knowledge-centre/statistical-reports?download=598:statistical-report-11-of-2016-30-november-2016 (last visited Dec. 20, 2016).

[30] See Olivier, Andrianarison & McLaughlin, fn. 20 at 29, 32–33.

[31] Little is known about the objectivity of targeting criteria and methods. Lack of data is a significant hindrance to successful targeting but diagnostic and baseline studies are increasingly available.

Poverty Eradication and Inclusive Development in Africa;[32]

➢ The flagship framework instrument of the AU, *i.e.* the AU Social Policy Framework (to be revised);[33]

➢ Important sector-focused instruments, such as SPIREWORK, focusing on social protection for those in the informal and rural sectors (also to be revised);

➢ The Addis Ababa Declaration on Social Protection for Inclusive Development (April 24, 2015): Ministers in charge of Social Development, Labour and Employment of the AU Member States committed to, *inter alia*, "[…] pursuing the rights-approach to social protection aimed at inclusive development that leaves no one behind […]; enhance[ing] political will in order to fully engage in the implementation of the AU Agenda 2063,[34] where it concerns social development, labour and employment; driving social protection by conviction and non-partisan political vision; investing in social protection for a multiplier effect that promotes social and sustainable development; recognizing recipients of social protection as rights holders and active citizens; […]"[35]

o In the Addis Ababa Declaration, the Ministers of Labour and Social Affairs of

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[32] See in particular the Five Year Priority Programme on Employment, Poverty Eradication and Inclusive Development (2015–2019), developed within the framework of the 2014 Declaration. This highlights as one of the six key priority areas "Social Protection and Productivity for Sustainable and Inclusive Growth." In this regard it sets the following two targets:

- At least 30% of vulnerable populations including persons with disabilities, older persons and children are provided with social protection.
- At least 20% of the informal sector and rural labour have access to social security.

Five focus areas for social security and social protection in African labour markets are indicated, from a human rights perspective:

- Informal economy and rural workers;
- Domestic workers;
- Social security in SMEs;
- Migrant workers;
- Child labor.

[33] AU Social Policy Framework for Africa (CAMSD/EXP/4(I) 2008). This Framework argues for the extension of social protection through measures such as publicly financed, non-contributory cash transfers (Para. 31). The Framework notes that there is an emerging consensus that a minimum package of essential social protection should cover: essential health care, and benefits for children, informal workers, the unemployed, older persons and persons with disabilities. This minimum package provides the platform for broadening and extending social protection as more fiscal space is created (Para. 32). The Framework further remarks that a minimum package can have a significant impact on poverty alleviation, the improvement of living standards, the reduction of inequalities and the promotion of economic growth (Para. 33).

[34] The First Ten Year Implementation Plan (2013–2023) under Agenda 2063 indicates social protection as a priority area, repeats the two targets set in the Five Year Priority Programme in indicated in fn. 32 above, and stipulates as key process actions/milestones in the period leading to 2023 the following:

- Domestication of the AU Social Protection Policy and Informal Economy Framework by 2018;
- Adoption of the Protocol on Citizens Rights on Social Protection and Security by the Summit in 2018.

[35] AU, *Addis Ababa Declaration on Social Protection for Inclusive Development* (AU, Addis Ababa, Ethiopia, Apr. 24, 2015).

African States have also requested the elaboration of: an additional protocol to the African Charter on Human and People's Rights on the Rights of Citizens to Social Protection and Social Security; the development of a Social Agenda (*i.e.* a revised Social Policy Framework) for the AU Agenda 2063; and, the promotion of South-South cooperation on social protection, in collaboration with UN and other partners; and

- The subsequent AU Executive Council, which turned the above commitments made by the Ministers in charge of Social Development, into decisions during the Twenty-Seventh Ordinary Session, 7–12 June, 2015, Johannesburg, South Africa.[36]

Sub-regional level: Regional Economic Communities (RECs)

Steps to better provide for social protection have also been taken at the sub-regional level, by several of the RECs in Africa. Notable in this regard are in particular the developments in the Southern African Development Community (SADC). The foundational instrument in the area of social security protection is the SADC Treaty, which implores Member States to harmonize political and socio-economic policies and plans, and to cooperate among others in the area of social welfare in order to foster regional development and integration.[37] There was evidently a need to give more concrete effect to the social dimension of the Treaty. Therefore, taking its cue from the Treaty, the Charter of Fundamental Social Rights lists as one of its objectives the harmonization of social security schemes.[38] It further imposes an obligation on Member States to provide an enabling environment for workers and those outside the labor market to have access to adequate social protection and sufficient resources and social assistance respectively.[39] Specific effect to this obligation has to be given especially in the area of old age, according to Article 8 of the Charter.

Of particular relevance is also the non-binding Code on Social Security in the SADC, of 2007. This instrument contains comprehensive provisions on social security and social protection; it covers the various social security contingences, including old age, and stresses the need for tailor-made arrangements to be adopted to ensure coverage extension to workers in the informal economy.[40]

The more recent Protocol on Employment and Labour in SADC (2014) enjoins each State Party to aim at developing an integrated and comprehensive social protection

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[36] Executive Council, *Twenty-Seventh Ordinary Session, 7–12 June 2015*, (Johannesburg, South Africa, Jun. 2015).

[37] Consolidated Text of the Treaty of the Southern African Development Community, as amended, 2009, Arts. 5(2)(a) and 21(3)(g), read with Art. 21(1).

[38] Charter of Fundamental Social Rights in SADC (the Social Charter) (2003), Art. 2.1(e).

[39] Id. Art. 10.

[40] The Code on Social Security in the SADC provides that everyone in SADC who has insufficient means of subsistence to support themselves and their dependents should be entitled to social assistance, in accordance with the level of socio-economic development of the particular Member State (Para. 5.1). The right to social assistance is specifically extended to those in need who are old, unemployed/dependent on survival activities, or disabled (Paras. 10.1, 11.1 and 14.1).

system which ensures meaningful coverage of all through social protection programs, including social assistance (Article 11(3)(a)). The Protocol emphasizes the progressive attainment of the benchmark of protection, in accordance with international and regional standards in SADC countries — according to Article 11(2), every Member State shall establish, maintain and progressively raise its system of social security to a level consistent with international and regional instruments, by ratifying and implementing ILO Social Security (Minimum Standards) Convention 1952 (No. 102) and implementing the ILO National Floors of Social Protection Recommendation 2012 (No. 202), the Charter of Fundamental Social Rights in SADC and the SADC Code on Social Security.[41]

National level

National constitutions in Africa play an increasingly important role in providing for social security: However, the potential impact of a constitution containing provisions on social protection differs from system to system. It will depend on the status accorded to these rights by the constitution and on the powers and ability of the courts to enforce these rights.[42] Often, constitutions also give a mandate to the legislature to adopt appropriate legislation to regulate social security and social assistance, and to governments to implement social protection policies/programs.

African constitutions provide for the right to social security in different ways. In some cases, social security (meant, in this context, to encompass social assistance as well) is indicated as a constitutional object of state policy; in others, it is treated as a duty imposed upon the State. However, social security is not often framed as a right that directly creates entitlements for beneficiaries. For example, the Zambian Constitution of 1996 stipulates (under the principles of State in Section 7 of the Constitution) that the State will endeavor to provide social protection-related rights to its citizens subject to the availability of resources (Section 112). Similarly non-binding references to social protection or welfare rights are contained in the constitutions of Namibia and Swaziland.

The most comprehensive constitutional protection of social security and social

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[41] The Protocol specifically provides that:

- Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance (Art. 11(1)(b));
- Every worker who has reached retirement age but is not entitled to a pension or does not have other means of subsistence shall be eligible to receive adequate social assistance to cater specifically for basic needs including medical care (Art. 14(b));
- Ideally, social assistance support should also be available to workers who have become unemployed and who are not covered by compulsory social insurance (Art. 15(i)); and
- Appropriate and adequate social security protection should be extended to informal and rural workers, among others, through universal schemes and social assistance measures (Art. 20(1)(e)).

[42] ILO, *Social Security and the Rule of Law*, fn. 28 at 85 Paras. 234–235; Marius Olivier, *Social Security: Framework*, in *LAWSA (The Law of South Africa) — Labor Law and Social Security Law*, Vol. 13, Part 2, LexisNexis (Durban), at Para. 150 (2012).

assistance in Southern Africa undoubtedly comes from South Africa. In the chapter dealing with the Bill of Rights, the South African Constitution grants everyone certain fundamental rights, and expects the State to respect, protect, promote and fulfill those rights (Section 7(2)). The Constitution grants to everyone "[t]he right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance" (Section 27(1)(c)), and obliges the State to implement appropriate measures: "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights" (Section 27(2)). Article 43 of the Constitution of Kenya (2010) also recognizes the right of every person to social security and that the State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

Constitutional protection of social security is often informed by formalized policy frameworks, and supported by implementing statutory regimes. According to a 2014 World Bank report, 24 of 49 surveyed African countries had a social protection policy or strategies, 13 countries were in the process of having one and 12 did not report any.[43] Statutory protection, however, poses a mixed picture. Whereas social insurance (*i.e.* contributory) schemes would generally be informed by statutory regulation, social assistance invariably lacks a right-basis in many African countries: Except for the now established social assistance schemes in some African countries, the lack of a proper legal mandate in many other countries is problematic.[44]

Courts play an important role in giving effect to constitutional rights related to social protection, including social assistance. Outside Africa, the Indian Supreme Court, for example, recognized in various judgments the right to social security and healthcare, as indirect rights derived from the right to life contained in Article 21 of the Indian Constitution.[45] Similarly, in the seminal case of *Khosa v. Minister of Social Development*,[46] the South African Constitutional Court held that a statutory provision which excluded permanent residents and their children from access to social assistance was unconstitutional: The provision infringed their constitutional rights to human dignity, equality and access to appropriate social assistance.

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[43] See Gentilini, Honorati & Yemtsov, fn. 29.

[44] See, for a discussion on the position in Southern African countries, Marius Olivier, *Social Protection in SADC: Developing an Integrated and Inclusive Framework — A Rights-Based Perspective*, in Marius Olivier & Evance Kalula, *Social Protection in SADC: Developing an Integrated and Inclusive Framework*, Centre for International and Comparative Labour and Social Security Law (CICLASS) & Institute of Development and Labour Law, at 23–32 (2004).

[45] See ILO, *Social Security and the Rule of Law*, fn. 28, at 85 Para. 291.

[46] See 2004 (6) BCLR 569 (CC).

II. AGING POPULATIONS: CHINA

A. General Developments and Overall Challenges

Mandated by Article 44 of the Constitution referred to earlier in this contribution, the social contingency of retirement is comprehensively provided for in China's statutory framework. From an insurance perspective, a multi-pillar framework is foreseen in the Labor Law. The includes the basic pension to which employers and employees contribute, supplementary schemes which employers with financial ability are urged to establish, and top-up savings insurance to which employees voluntarily contribute.[47] The Social Insurance Law provides for extensive coverage,[48] contains the essential elements of both the urban and rural public pension schemes (in addition to the approximately 3,000 existing pension pools) and provides for joint enforcement, which should serve as the building blocks for an overall urban-rural pension insurance system.[49] The legal framework is supported by a national system of social security numbers being allocated to individuals, and the construction of a national social insurance information system.[50]

Generally speaking, the retirement system of China and its different components face a number of serious challenges, including:[51]

- System fragmentation;
- Rapid urbanization, and urban-rural disparities;
- Labor force informalization; as well as changes in family structure;
- Some indication of mismanagement and corruption; and
- A substantial percentage of workers are covered by the system, but the benefits are largely inadequate.

In addition, there are several specific challenges that have warranted innovative responses. Four issues are particularly addressed in the discussion below. These are: (a) a major funding gap; (b) high urban contribution rates, inadequate benefits and a benefit gap, with reference to retired urban and rural workers' benefits; (c) discrepancy or inequality, concerning still existing distinctions between public and private sector workers; and (d) enhancing coverage of migrant workers and portability.

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[47] See Labor Law of the People's Republic of China, Arts. 75(1) and (2); see also LI, fn. 13 at 262, 267, 279–280.

[48] Farmers, the unemployed and migrant workers have been added to the sphere of beneficiaries.

[49] See LI, fn. 13 at 267–269, the public pension scheme for rural workers was piloted in 1995; in 2009 the already existing urban scheme for urban workers was solidified. See also Dorfman, Holzmann & O'Keefe et al., fn. 10 at xi, 1–2, 16–17, in 2011 a Pilot Social Pension Insurance for Urban Residents was announced.

[50] See LI, fn. 13 at 279.

[51] See Dorfman, Holzmann & O'Keefe et al., fn. 10 at 2–3, 19.

B. Specific Challenges and Innovative Responses

1. Funding Gap. — It has been reported that the public retirement system in China suffers a major funding gap, which is expected to reach $ 11 trillion by 2050. A 2013 report by the Chinese Academy of Social Sciences (CASS) suggested that without adjustments, the accumulated shortfall will constitute 90% of GDP by 2050.[52]

The funding gap is caused by a range of factors, including:

- Aging: The Minister of Human Resources and Social Security, YIN Weimin, reported that the proportion of Chinese over 60 will rise to 39% of the population by 2050, from the current level of 15%. In fact, life expectancy has increased from 45 (1950) to 75 (today). For the first time, since 2012, the number of working age population started falling.[53] The World Bank reported in 2013 that old-age dependency ratios are projected to rise from 13.5% and 9.0% in 2008 in rural and urban areas, respectively, to 34.4% and 21.1% by 2030. In the urban old-age insurance system, the system dependency rate, which was 34% in 2001, is projected to increase to 100% (one worker for each retiree) within 30 years.[54]
- Underpayment and avoidance of contribution payments; and
- Corruption and some mismanagement.

Several measures to address the funding gap have been introduced or proposed, including:

- Expanding the investment scope, allowing for investments in higher profit-yielding assets;
- Relaxation of the one-child policy;[55] and
- Raising the retirement age (which is on average 53) from 50 to 55 (for females) and from 55 to 60 (for males).[56]

2. High Urban Contribution Rates, Inadequate Benefits and Benefit Gap: Retired Urban and Rural Workers' Benefits. — It has been indicated that China's urban old-age insurance system contribution rates of 28% of covered wages are relatively high when compared with those of Organisation for Economic Co-operation and Development (OECD) countries. These high contribution rates, it has been suggested, impact labor costs and competitiveness, thereby discouraging participation. Also, such rates do not include

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[52] See *Paying for the Grey: As a Pensions Crisis Looms, China Looks at Raising the Retirement Age*, The Economist, Apr. 9, 2014, available at http://www.economist.com/node/21600160/printon (last visited Dec. 23, 2016).

[53] Id.

[54] See Dorfman, Holzmann & O'Keefe et al., fn. 10 at 18.

[55] See fn. 52.

[56] Id. See also Dorfman, Holzmann & O'Keefe et al., fn. 10 at 19–21.

other social security contributions, which "[t]ogether with pension contributions can total about 41% depending upon local regulations. Such high rates create strong incentives for evasion, distorting labor markets. Moreover, regional differences in contribution rates impact labor and business competitiveness."[57]

One of the challenges faced by the public retirement system is the low replacement rate of benefits — *i.e.* around 40% of pre-retirement income. This is being regarded as inadequate, and has been the result of pegging the retirement income to the "standard wage," which for many years remained stagnant — although more recently, this has been linked to the rising minimum wage.[58]

In 2009 a new pension system for rural workers, meant to cover hundreds of millions of rural workers and paid for by farmers, collective benefits and government subsidy, was rolled out.[59] However, the 2013 report by the CASS indicated that retired urban workers receive on average RMB 20,900 annually, compared to RMB 859 annually received by retired rural workers (the latter figure being well below the official poverty threshold of RMB 2,300 annually).[60]

Measures suggested to address this shortcoming include, in particular, the envisaged unification of public urban and rural pension systems.

3. Discrepancy/Inequality: Public versus Private Sector Workers. — Until recently, 40 million public sector workers did not contribute, and yet drew sizeable benefits (80%–95% of last salary), paid for by the general fiscal budget. In contrast, private sector workers contribute 8% of salary (and the employer 20%), but receive 40%–45% of last salary as benefit.

Several measures are being introduced to deal with this discrepancy, in addition to addressing the funding gap, discussed above. Firstly, according to a State Council plan announced in 2015, public sector workers are to contribute to the same extent as private sector workers. Secondly, a phased approach has been adopted to address the gap in pension benefit between public and private sector workers.

4. Enhancing Coverage of Migrant Workers and Portability. — As has been indicated, under China's *hukou* (or household registration) system, it is very difficult for migrant workers (migrating from rural areas) to officially change their place of residence to their new urban homes. However, in 2015, in accordance with it gradual approach to reforming

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[57] See Dorfman, Holzmann & O'Keefe et al., fn. 10 at 21.

[58] See LI, fn. 13 at 276–277.

[59] See *China to Roll out Rural Pensions*, BBC news, Aug. 5, 2009, available at http://news.bbc.co.uk/2/hi/asia-pacific/8186234.stm (last visited Dec. 23, 2016). The new scheme is totally different from the old system, which was paid for by farmers themselves, with no subsidy from the government.

[60] See fn. 52.

the registration system, the State Council announced that it would grant urban residence permits to 100 million permanent urban residents by 2020 — a large number, constituting less than half of the nearly 274 million migrant workers China had by 2014.[61]

A related problem has to do with the lack of portability of benefits. The World Bank commented as follows in a 2013 publication:[62]

> *A national pension framework including the portability of pension rights is essential to remove barriers to China's increasingly mobile labor force. Workers in China have become increasingly mobile in recent years, and such a trend will undoubtedly continue with projected urbanization. Establishing a framework for the portability of urban and rural pension rights will strengthen old-age income security for a growing population with work histories that span locations in urban and rural areas. With fully portable pension rights, individuals can make labor market decisions without the distorting effects of losing accumulated rights because of changes in profession or location.*

The complexity of this issue, also from the perspective of issues of incentives, has been highlighted by the same study:[63]

> *The 2008 labor law requires migrant workers to be included in urban social insurance programs. However, migrant workers apparently in many cases have preferred higher wages in lieu of social insurance contributions. Avoidance of such contributions is one source of labor competitiveness whereby migrants can compete based on lower all-in labor costs. Concerns about portability of pension entitlements also act as a disincentive for mobile workers. The effect can be seen in findings from the 2010 China Urban Labor Survey (CULS) in six provinces which found only around 20 percent participation in the urban workers' pension scheme by migrants, against an average of around 80 percent for local hukou workers.*

III. AGING POPULATIONS: AFRICA

A. General Developments and Overall Challenges

Comprehensive developments have occurred in Africa in recent years, in both the non-contributory and contributory domains. The significant impact on poverty reduction (at both the individual and household level) of the introduction[64] and gradual expansion[65] of non-contributory old age grants in several Southern African countries has been widely

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[61] Shannon Tiezzi, *China's Plan for "Orderly" Hukou Reform*, The Diplomat, Feb. 3, 2016, available at http://thediplomat.com/2016/02/chinas-plan-for-orderly-hukou-reform/ (last visited Jun. 16, 2017).

[62] See Dorfman, Holzmann & O'Keefe et al., fn. 10 at 21.

[63] Id. at 47.

[64] *E.g.* in several Southern African countries, such as Botswana, Lesotho, Namibia, South Africa and Swaziland.

[65] *E.g.* Lesotho and South Africa.

reported. As indicated in a 2008 International Social Security Association (ISSA) study:[66]

> *All in all, non-contributory pensions are an effective way of redistributing income from high-income groups to the poor and promoting social cohesion and political stability. This encourages long-term investment in the local economy. In the middle of the last century, Mauritius had a vulnerable mono-crop economy and high poverty rates. Today, Mauritius has the lowest poverty rate in Africa, and the social pension established in 1950 is recognized as one factor that contributed to the social cohesion necessary to restructure the economy onto a high growth path…*

Additional measures include the adoption or intended roll-out of cash transfers to older people on a smaller-scale pilot basis, on either a targeted or universal basis — *e.g.* in Ghana, Kenya, Mozambique, Namibia, Sierra Leone, Uganda and Zambia.

Contributory schemes have also been reformed. Several countries have transformed national provident fund schemes into pension schemes or are in the process of doing so — for example, Kenya, Tanzania and Swaziland. Some countries have built multi-pillar pension schemes, or are contemplating doing so — for example, Ghana, Mauritius and South Africa. These schemes involve at times both a non-contributory (providing a basic pension) and contributory element — the latter in turn would involve both compulsory contributions to a national scheme and voluntary contributions to occupational or private schemes. Mauritius could be cited as an example; South Africa is considering a similar model. Ghana has introduced a three-pillar contributory system. Extension of coverage to those who are self- or informally employed is being contemplated in several countries; Ghana has established an Informal Sector Fund to achieve this.

B. Specific Challenges

1. Funding Limitations. — Across the contributory and non-contributory public retirement domains, funding has been a hindrance to rolling out sufficient support to older people. In particular as far as public social insurance schemes are concerned, this has been caused by a number of factors, among which weak governance structures, poor management and undue government influence — as elaborated on below.

The impact of aging is increasingly also becoming a challenge facing Africa and affecting the financial sustainability of social security programs/schemes.[67] A 2011 African Development Bank (AfDB) publication indicated that the elderly figure (currently 3.6% of the population in Africa) could rise to 4.5% by 2030, and almost 10% by 2050. In some African countries, the proportion of older people will almost match that of industrialized countries by 2030 and 2050. Life expectancy already stands at 56

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[66] ISSA, *Dynamic Social Security for Africa: An Agenda for Development — Developments and Trends*, at 8 (2008).

[67] Id. at 7. This is the case, even though, in comparison with all other continents, Africa still has the youngest population, on average.

years.[68]

It is appreciated that aging will have serious implications for pension regimes, and steps to address this are increasingly considered in Africa. However, responses thus far have seen limited impact on traditional measures to deal with this challenge, such as raising the retirement age and/or reducing benefits, but some countries have seen other substantial (*i.e.* some related) reforms, including:

- Embedding life expectancy into the design of new public/national schemes (*e.g.* Lesotho); and
- Introducing a multi-pillar old-age provision, involving among others a basic state guarantee and extended reach of existing contributory and non-contributory schemes, linked to improved quality of benefits. Some of the many African countries that have increasingly embarked on this route include Ghana, Mauritius, Morocco and Mozambique.[69]

Measures aimed at improved funding and the creation of fiscal space have constituted a major response to the funding crisis. African countries have therefore embarked on utilizing a range of complementary mechanisms to help fund old age provisioning, in addition to strengthening contributory elements of the system. In particular as far as social assistance is concerned, African governments have adopted policies aimed at promoting economic growth and allocating the revenue so obtained to social assistance programs, choosing from a range of interventions, including: (i) reallocate public expenditures; (ii) increase tax revenues; (iii) borrow or restructure existing debt; (iv) curtail illicit financial flows; and (v) adopt a more accommodating macro-economic framework.[70] In fact, this development goes beyond the area of old age provisioning, and also covers other social security areas, such as health provisioning.[71] Several examples of how governments have successfully developed and used fiscal space can be mentioned. Lesotho is an example of a poor and low-income developing country committed to make

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[68] Alice Nabalamba & Mulle Chikoko, *Aging Population Challenges in Africa*, available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Aging%20Population%20Challenges%20in%20Africa-distribution.pdf (last visited Dec. 21, 2016). For help aging in Africa, see *Global Ageing*, available at http://www.global-ageing.eu/agafrica.html (last visited Dec. 22, 2016). See ISSA, fn. 66 at 7, already in 2008, the ISSA noted: "Currently the number of people in Africa aged 60 or older is estimated at 35 to 40 million, representing 5 percent of the world's population in this age group. By 2050 the number of older women and men in Africa will rise to over 200 million, with older women's life expectancy exceeding men's by 3 to 5 years. Although HIV/AIDS causes millions of premature deaths in Africa, the number of people entering old age will double by 2030."

[69] ISSA, *Africa — A New Balance for Social Security*, at 14 (2011); ISSA, fn. 66 at 7–9.

[70] Olivier, Andrianarison & McLaughlin, fn. 20 at 52–58; see also ISSA, id. at 8; ISSA, fn. 66 at 27–28, 34, and more generally, Asian Development Bank (ADB) & ILO, *Social Protection for Older Persons: Social Pensions in Asia*, at 151 (2012) and ILO, *World Social Protection Report 2014–2015*, at 149–150 (2014).

[71] As noted by the ISSA, by innovatively using mixed financing sources (*i.e.* a combination of international aid, community-based health insurance schemes, government subsidies for marginalized groups and social insurance for the formal sector), nearly the entire population of Rwanda now has health insurance coverage, even though it is still classified as a low-income country. See ISSA, fn. 69 at 12.

substantial investments in social protection initiatives. To enable the government of Lesotho to shoulder the expenditure of an in effect universal old age pension, which covers 4.5% of the Lesotho population, a fiscal reprioritisation took place. The pension is largely funded from Southern African Customs Union (SACU) revenues received by Lesotho, which indicates government's willingness to find and increase fiscal space even in times of economic hardship.[72] The same also appears to be true of a country such as Cape Verde, which has introduced among others a non-contributory pension for the elderly.[73]

2. Contributory Schemes.[74] — Earlier in this contribution, two of the fundamental shortcomings of contributory retirement schemes in Africa have been highlighted: firstly, their limited reach, due to the primary focus they place on formal sector employees and, secondly, the over-reliance on inadequately regulated and linked private and market-based insurance, due to the lack of a public scheme framework in several, particularly sub-Saharan African countries.[75]

However, contributory schemes display also other shortcomings, including:[76]

- Systemic failures and weak governance frameworks: The effectiveness of public arrangements is often questioned, as a result of perceived mismanagement, high costs, fragility of the political system, inadequate benefits, deficient service delivery, inappropriate funding arrangements and a lack of willingness to register and/or contribute. Historically, social security in Africa has often been characterized by weak governance structures; incapacitated, inadequate and fragmented institutions; and weak service delivery. However, several governments have taken steps to curb high administrative costs, strengthen institutional and human capacity, introduce good governance frameworks, create and strengthen service delivery institutions, establish independent supervisory bodies, develop broad-based registration and integrated targeting mechanisms, and provide a consistent and professional service to clients and beneficiaries.[77]

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[72] European Commission (EC), *The 2010 European Report on Development: Social Protection for Inclusive Development: A New Perspective in EU Co-operation with Africa*, available at http://erd.eui.eu/media/2010/Social_Protection_for_Inclusive_Development.pdf (last visited Dec. 22, 2016); Marius Olivier, *Social Protection in Lesotho: Innovative Developments and Reform Challenges*, 30(1) Development Southern Africa, 98–110 (2013).

[73] Miguel Niño-Zarazúa, Armando Barrientos & David Hulme et al., *Social Protection in Sub-Saharan Africa: Getting the Politics Right*, 40(1) World Development, 163–176 (2012).

[74] See generally Olivier, Andrianarison & McLaughlin, fn. 20 at 28–29.

[75] See Para. IC2 above.

[76] See Olivier, Andrianarison & McLaughlin, fn. 20 at 28–29.

[77] Luca Barbone & Luis-Alvaro Sanchez, *Pensions and Social Security in Sub-Saharan Africa — Issues and Options*, in Social Security in Africa: New Realities, Thirteenth African Regional Conference, Accra, Jul. 6–9, 1999, Social Security Documentation, African Series No. 21, ISSA (Abidjan), at 23–24 (1999); Marius Olivier, *Acceptance of Social Security in Africa*, in Proceedings of 15th African International Social Security Association Regional Conference Social Security in Africa Series No. 27 Social Security Documentation, at 39–72 (2006).

- Lucrative/privileged arrangements in favor of public employees and office-bearers: Lucrative arrangements for among others, civil servants and politicians remain in place in many African countries: No or limited contributions are paid by the members, while benefits become an expense of the public purse (often paid *via* budget-sponsored Consolidated Funds or similar arrangements).

- Absence of regular benefits: The tendency of some contributory retirement schemes to pay lump-sum instead of regular/ongoing benefits has a major impact on the long-term survival of beneficiaries and households, and causes continued reliance on weak social assistance and overburdened social protection arrangements.

- Lack of inter-scheme and cross-border coordination: Portability of accrued entitlements between retirement schemes within African countries is often inadequately provided for. Also, cross-border coordination of contributory schemes and (ex)portability of benefits are in place in a limited (albeit increasing) range of countries only — some bilateral arrangements do exist, while multilateral agreements are, despite innovative new developments,[78] largely absent. Innovative envisaged multilateral frameworks are limited to some African regions only (*e.g.* the East African Community; and in West Africa).

3. Non-Contributory Arrangements. — Apart from challenges relating to absence of a right-based framework, lack of appropriate alignment and overcoming financial constraints, discussed above,[79] non-contributory retirement arrangements in African countries also face other challenges, including:[80]

- System and impact deficiencies: Social assistance and cash transfer programs aimed at providing retirement protection, especially in sub-Saharan Africa, are generally characterized by their focus on particular vulnerable groups (to the exclusion of the rest of the impoverished population and other vulnerable categories), difficulties in defining and administering targeting criteria, inconsistencies in service delivery, limited fiscal space and the absence of impact assessment studies. However, evaluation and impact assessment undertaken or supported by development partners are fast becoming a hallmark of program design, reform and implementation.

- Weak prospects of scaling up donor-led programs: Many cash transfer initiatives are fragmented, *ad hoc* and short-term, due to mainly donor establishment and implementation. Consequently, the prospects for sustainability and scaling up of these

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[78] The SADC Labour Ministers and Social Partners adopted the SADC Cross-Border Portability of Social Security Benefits Policy Framework, developed with the assistance of the ILO, in May 2016: SADC/ELSM&SP/1/2016/3 (2016) — Record of the Employment and Labour Meeting of Ministers and Social Partners, May 12, 2016, Gaborone, Botswana, Para. 3.9 (Decision 4).

[79] See respectively Paras. IC3, IC4 and IIIB1 above.

[80] See Olivier, Andrianarison & McLaughlin, fn. 20 at 31–32.

programs are generally poor, in view of national government resistance.[81] However, exceptions do exist in countries where governments take ownership of donor-driven initiatives — provided the required fiscal space can be found.

IV. EXTENSION OF SOCIAL PROTECTION TO INFORMAL WORKERS: CHINA

The informal sector in China is considered as one of the main driving forces beyond economic growth in China. This heterogeneous sector is highly mobile, dynamic and competitive, and has close links with internal migration. Its growth in China has been associated with several factors, including economic restructuring, rural-urban migration, labor market segmentation, weak formal safety nets and a social protection system which incentivizes informal sector growth.[82]

In 2007, an OECD study noted that, depending on the definition used, even in urban areas in China informal work constitutes 50% of all urban employment, fuelled in particular by internal migration.[83] However, more recent data indicate that the share of informal employment has been decreasing rapidly, from a high of 65.2% in 2001 to 40.3% in 2010 — this is largely due to China's economic growth, market-oriented reform and labor market regulation, which effectively extended labor (law) protection to more informal workers.[84] Migrants account for more than one-third of urban workers,[85] thereby contributing to the shared fate of internal migrants (also migrant workers) and informal urban workers for social security coverage purposes. In fact, these categories remain poorly covered in terms of retirement-related social insurance provisioning. Poor coverage is the result of several overlapping factors, in particular[86]

- The occupation-oriented nature of public pension scheme coverage;
- Lack of enforcement of labor regulations;
- The voluntary nature of membership of urban (and also rural) pension schemes for urban and rural residents respectively (as opposed *to workers*, who are compelled to

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[81] See Niño-Zarazúa, Barrientos & Hulme et al., fn. 73 at 163–176.

[82] Johannes Jütting & Theodora Xenogiani, *Informal Employment and Internal Migration: The Case of China*, OECD (Beijing), Nov. 2007, available at www.oecd.org/dev/poverty/39883049.ppt (last visited Dec. 24, 2016).

[83] Id.

[84] GAO Wenshu, *Informal Employment and Its Effect on the Income Distribution in Urban China*, presentation, Brussels (2015), available at http://ec.europa.eu/social/BlobServlet?docId=14713&langId=en (last visited Jun. 26, 2017); DU Yang, *Improving Social Protection System in China: Key Trends and Policies*, OECD (2010), available at https://www.oecd.org/els/emp/45276885.pdf (last visited Jun. 26, 2017).

[85] See GAO, id.

[86] JIANG Jin, QIAN Jiwei & WEN Zhuoyi, *Social Protection for Workers in the Urban Informal Sector in China: Institutional Constraints and Self-Selection*, available at file:///C:/Users/user/Downloads/PAA16_InformalSector2_JIANGJin.pdf (last visited Jun. 26, 2017).

enrol); and

- Self-selection, as a result of the fact that: (i) Even those who opt out of social insurance coverage remain covered under the basic social assistance program (*e.g.* the Minimum Livelihood Guarantee Scheme (*dibao*)); and (ii) employers are more likely to opt out, as they think that the social insurance programs emphasize redistributive functions and provide unattractive benefits.

In addition, the inability of migrant workers who are not registered to work in cities due to the operation of the *hukou* system, further contributes to the absence of formal social protection.[87]

Informal workers are therefore served by old age-related social insurance schemes only to a limited extent, particularly in rural areas, and as they do not generally participate in urban old-age insurance systems.[88] In fact, as has been indicated, the weak social protection position of informal workers, in particular migrant workers, also extends to their family members, many of whom remain in rural areas.[89]

Nevertheless, important changes to this scenario are discernible, mainly as a result of two reasons. Firstly, as has been noted, the Chinese government has strengthened labor market regulations, as is apparent from the range of new labor related laws that have been enacted: It seems that stricter regulations have positive effects on increasing coverage rates. Secondly, the changes in main labor market outcomes (*e.g.* increased formal employment and increased earnings for unskilled workers) facilitate the improvement in coverage modalities.[90] Despite this, a considerable wage gap still exists between informal and formal workers, which enhances labor income inequality in urban areas — a recent study indicated that informal employees' earnings were 67% of those of formal employees, and this large earnings gap raised the Gini coefficient to 0.42 in 2005.[91]

One of the critical tasks ahead is to take steps to reduce and overcome the inherited inequality. From a social protection perspective, also as far as social insurance-based retirement provisioning is concerned, it appears necessary to take steps to integrate different components of the system.[92] The envisaged unification of public urban and rural pension systems,[93] and the granting of urban residence permits to an increasing number of permanent urban residents are important steps towards integration, equal treatment and extended coverage.[94]

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[87] See Jütting & Xenogiani, fn. 82.

[88] See Dorfman, Holzmann & O'Keefe et al., fn. 10 at 3–4, 26, 35; see also Jütting & Xenogiani, fn. 82.

[89] See Jütting & Xenogiani, fn. 82.

[90] See DU, fn. 84

[91] See GAO, fn. 84.

[92] See DU, fn. 84.

[93] Para. IIB.2 above.

[94] Para. IIB.4 above.

V. EXTENSION OF SOCIAL PROTECTION TO INFORMAL WORKERS: AFRICA[95]

A. Informal Economy Contours

The term "informal sector" is not uniquely defined.[96] When it was used for the first time in a research paper by the ILO for purposes of the Kenyan context in 1972, no specific definition was attached to it. Rather, it was used as an "analytical terminology to describe the duality in the labour market."[97] It has been suggested that this term be replaced with the broader term "informal economy."[98] The term "informal economy" would be more appropriate as it takes account of the considerable diversity of workers and economic units in different sectors of the economy and across rural and urban contexts. However, both these phrases fail to fully encapsulate the nature of what they are explaining. Activities within the "informal sector" fall into a variety of sectors, often with no similarities, whilst "informal economy" fails to illustrate the significant grey areas between the informal and formal economy.[99] The emphasis, it is suggested, should be on informality, encapsulating those activities falling *de facto* (factually or in practice) or *de jure* (legally) outside the reach of law, in particular the current social security (legal and therefore institutional) framework.[100]

The lack of social protection is one key characteristic of the informal economy, as are low productivity, poor working conditions and an absence of legal protection and rights. It has been suggested that:[101]

> *The two main categories of informal employment, wage employment in jobs without*

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[95] See Olivier, Andrianarison & McLaughlin, fn. 20 at 73–85, on which this part partly relies.

[96] For a further detailed discussion on this and other matters covered in this part of the report, see Marius Olivier, *Informality, Employment Contracts and Extension of Social Insurance Coverage*, Report prepared for the ISSA, (2009) (A study produced under the ISSA Project on "Examining the Existing Knowledge on Social Security Coverage Extension," Working Paper No. 9, ISSA, (Geneva)); Marius Olivier, Juliana Masabo & Evance Kalula, *Informality, Employment and Social Protection: Some Critical Perspectives for/from Developing Countries*, Paper presented at the ILERA World Congress, Philadelphia (Jul. 2012). See also Stefan Zimmer & Eva-Marie Höffer, *The Challenge of Occupational Diseases in Developing Countries: Exemplary Observations and Good Practice Proposals from a Cycle of Seminars in Four Continents*, 1(1) International Journal for Social Security and Workers Compensation, 10 (2009).

[97] ILO, *Employment, Incomes and Equality: A Strategy for Increasing Productive Employment in Kenya*, ILO (Geneva), at 503 (1972).

[98] Emmanuel Reynaud, *The Extension of Social Security Coverage: The Approach of the International Labour Office*, Social Security Policy and Development Branch-ESS Paper No. 3, ILO (Geneva), at 2 (2002).

[99] See Olivier, fn. 96 at 5.

[100] This appears to be the more or less general consensus emerging from the vast amount of expert opinion, see ILO, *Strategies to Promote Transition to Formality in Africa*, background paper, joint AU/ILO expert workshop on the informal economy in Africa (Dakar), at 12 (2008).

[101] EC, *Empowering People for Inclusive Growth: The Perspective of the Working Poor in the Informal Economy*; EC Concept Note — High Level Panel (2012). See also Francie Lund, *Work-Related Social Protection for Informal Workers*, 65(4) International Social Security Review, 9–30 (2012).

> *social protection and self-employment in unincorporated enterprises, can be further disaggregated into different categories of employment relationships. Self-employment consists of own-account workers and employers of informal enterprises who hire other workers. The conditions of these two categories are often very different. Wage-employment includes informal employees of both formal and informal firms, subcontracted workers, wage workers for households (domestic workers), and wage workers with no fixed employer (casual day workers).*

While this distinction is valid, it needs to be said that there is a vast and growing range of other forms of work which cannot be regarded as either self- or wage employment. Many of these informal workers do their work in supply chain contexts, and may not have a relationship with an employer, but at best with a "provider" of work. Others may be working in the care economy, and could hardly be regarded as being self-employed in the sense used above.[102]

In fact, one should be careful to rely on standard classifications in this area; as has already been noted: "Informal sector heterogeneity continues to defy easy generalizations."[103] In their contribution, based on a representative sample from seven capital cities in francophone West Africa, Grimm, Knorringa and Lay commented on the traditional characterization of the informal economy according to broad economic activity and income-generating potential. They indicate that the traditional distinction between so-called upper-tier top performers and lower-tier survivalists is far too narrow, and does not capture the profile of a group they call "constrained gazelles." While this latter group structurally forms part of the lower-tier survivalists, they display strong entrepreneurial dynamism, characterized by a suitable educational background, language and business skills, a minimum of financial literacy and an understanding of market conditions — characteristics traditionally associated with the "top performers." However, they lack access to capital, insurance and productive infrastructure. Very high marginal returns to capital can be earned by many falling within this group, which ranges in size from 28% (Benin) to 58% (Côte d'Ivoire). Appropriate social protection policy interventions would therefore require addressing these shortcomings, including the provision of insurance to cover important household-related risks, such as health shocks and death.[104]

In addition, social protection policy interventions aimed at those working informally should also be mindful of demographic and other changes. It is clear that agriculture alone can never absorb the currently dependent population into productive employment, and economic diversification, especially a shift to manufacturing industries is

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[102] See also Frances Lund & Smita Srinivas, *Learning from Experience: A Gendered Approach to Social Protection for Workers in the Informal Economy*, ILO (Geneva), at 3 (2000).

[103] Michael Grimm, Peter Knorringa & Jann Lay *Constrained Gazelles: High Potentials in West Africa's Informal Economy*, Working Paper No. 53, International Institute for Social Studies (ISS) (The Hague), at 28 (2012).

[104] Id. at 27–28.

necessary.[105] Informality of employment may prevail; yet these changes may have a profound impact on the mix of social security responses required in the developing world context. Also, the borderlines between formal and informal have increasingly become fluid and blurred as formal employment has decreased world-wide, and as people tend to move out of formal into informal and non-traditional employment, and vice versa, more readily than in the past. There is, therefore, both a continuum and a fluidity or mobility between the formal and informal economy.[106] This may have important consequences from the perspective of social security protection.

Different from what the position might be in the so-called developed economies, informal employment is not generally regarded as illegal or irregular in the developing world, but as a standard way of life and income-generation.[107]

B. Extent of Informal Economy Engagement

As far as informal employment in (sub-) Saharan Africa generally is concerned, it has been suggested that this form of employment constitutes 66% of all non-agricultural employment (excluding South Africa and other countries in Southern African with a relatively low prevalence of informal employment). If informal employment in agriculture is included, this rate is as high as 90% of employment in some countries (*e.g.* Ghana in sub-Saharan Africa; the same applied to India in South Asia).[108] According to a 2008 ILO study, the gender dimension of informal employment in sub-Saharan Africa is evident from the fact that 84% of women non-agricultural workers are informally employed, as opposed to 63% of male non-agricultural workers.[109] In Africa in particular, the relationship between informal work in low-productivity environments and lowly paid positions is evident — according to a recent ILO report, the persistence and depth of poverty in Africa is strongly related to both the structure of employment and low productivity.[110]

The figures for other parts of the world correspond with those for sub-Saharan Africa

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[105] Akbar Noman & Joseph Stiglitz, *Good Growth and Governance for Africa: Rethinking Development Strategies — Introduction and Overview* (Draft, 2013); Horst Koehler, *Post-2015 Global Agenda: Employment and Perspectives for the Youth*, Discussion paper, High-Level Panel Working Papers Series, at 1–2 (2013).

[106] Armando Barrientos & Stephanie Ware Barrientos, *Extending Social Protection to Informal Workers in the Horticulture Global Value Chain*, Social Protection Discussion Paper Series No. 0126, World Bank Report (Washington), at 18–19 (2002); Judy Fudge, *Blurring Legal Boundaries: Regulating for Decent Work*, in Judy Fudge, Shae McCrystal & Kamala Sankaran eds. *Challenging the Legal Boundaries of Work Regulation*, Hart Publishing (Oxford), at 7–8 (2012).

[107] See Lund, fn. 101 at 13–14.

[108] See EC, fn. 101 at 2, quoting ILO, *Women and Men in the Informal Economy: A Statistical Picture* (2nd edition), ILO and WIEGO (Geneva), (2012).

[109] See ILO, fn. 100 at 3–4.

[110] Id. at 3. See also Olivier, fn. 96.

quoted above. As has been noted, informal employment represents a significant share of non-agricultural employment in developing regions: ranging from 51% in Latin America to 65% in East and Southeast Asia, to 82% in South Asia; informal employment represents 10% of non-agricultural employment in Eastern Europe and Central Asia. This is contributed to by multiple reasons including, but not limited to, inability of the formal economies in these countries to create jobs and to absorb the new job entrants and the impacts of structural adjustment programs (SAPs).[111]

C. Reasons Why Informal Economy Workers Are Excluded from Access to Social Security

There are many reasons why workers in the informal economy, including migrant workers in the informal economy, are effectively excluded from social security coverage. In the main, subject to exception, national social security systems essentially cover those in the formal economy, who work within the framework of an identifiable employment relationship: In most cases, both the "employee" and "employer" concepts are narrowly defined, implying that only dependants of employees so defined are covered.[112] Also, informal workers may be excluded from coverage because a public scheme covering a particular benefit, such as pensions, does not exist, while participating in private or occupational scheme alternatives may not be affordable for or otherwise attractive to informal workers; informal workers may not be compelled to belong to an existing public or private scheme, or little incentive exists to join a scheme which may be accessible.[113] As a further consideration, certain structural reasons have caused informal workers to be excluded or removed from social security coverage and related labor law protection. Formal economies in developing countries have struggled to create jobs and to absorb new job entrants.[114]

It would be a fair comment to suggest that the effect of the informalization and casualization of labor, and the inability thus far of legislatures and governments to comprehensively cover unorganized workers in social security terms, is that such workers are exposed to poor working conditions and an absence of legal protection and rights. Dealing with and managing the risks to which informal economy workers and their

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[111] See Olivier, fn. 96 at 7; EC, fn. 101.

[112] See ILO, fn. 100 at 19; Marius Olivier, *Work at the Margins of Social Security: Expanding the Boundaries of Social Protection in the Developing World*, in Wim van Oorshcot, Hans Peeters & Kees Boos, *Invisible Social Security Revisited: Essays in Honour of Jos Berghman*, Lannoo Publishers (Leuven), at 219 (2014).

[113] Marius Olivier, *Informality, Employment Contracts and Social Insurance Coverage: Rights-Based Perspectives in a Developing World Context*, 2(4) International Journal of Comparative Labour Law and Industrial Relations, 426 (2011). Self-employed informal workers are often required to pay a double contribution; informal workers who employ others may be barred from participating in a social insurance scheme; invariably no incentives to join a national scheme exist.

[114] See ILO, fn. 100 at 10; Olivier, fn. 96 at 7.

dependants are exposed to have effectively been shifted onto such workers and their families, and ultimately to other social security schemes (such as health care schemes) and state-provided social assistance.[115]

Finally, attention should be drawn to the widespread reliance on informal social security in Africa, which is largely the result of the inadequate provision via the formal social protection system, despite the strong cultural and social connection some of the informal schemes may have. These include traditional savings systems and funeral schemes in among others several African countries. For example, traditional *mahber* systems in Eritrea (and Ethiopia) provide for risk-sharing arrangements. In the absence of formal social protection and micro- and mutual health insurance, these systems continue to function as primary safety nets. However, these informal initiatives are unable to achieve, on their own, adequate protection and need to be evolved and integrated with the formal system of protection, also from the perspective of an overarching conceptual framework.[116]

VI. EXTENSION OF SOCIAL PROTECTION TO INFORMAL WORKERS: INTERNATIONAL STANDARDS, HUMAN RIGHTS CONSIDERATIONS AND COMPARATIVE PERSPECTIVES

A. International Standards

Until recently, international standards made little specific reference to social protection in the informal economy context. In general terms, Paragraph 1(e) of ILO Recommendation 202 of 2012 on National Floors of Social Protection, mentions as one of the principles to be applied, the "social inclusion, including of persons in the informal economy." Paragraph 15 in turn suggests that "[S]ocial security extension strategies should apply to persons both in the formal and informal economy." Of course, it would be possible to argue that these workers, because of their precarious status, are highly vulnerable and therefore in need of social security support. As indicated by Recommendation 202: "Social security extension strategies should ensure support for disadvantaged groups and people with special needs."[117]

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[115] See Fudge, fn. 106 at 2; Guy Davidov & Brian Langille, *Introduction: Goals and Means in the Regulation of Work*, in Guy Davidov & Brian Langille eds. *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work*, Hart Publishing (Oxford), at 2 (2006).

[116] Abena Oduro, *Formal and Informal Social Protection in Sub-Saharan Africa*, Final Report prepared for the European Report on Development, European University Institute (Florence), (2010); Franz von Benda-Beckmann, *Indigenous Support and Social Security: Lessons from Kenya*, in James Midgley & Michael Sherraden eds. *Alternatives to Social Security: An International Inquiry*, Auburn House (Westport), (1997); Hans Gsänger, *Linking Informal and Formal Social Security Systems*, available at http://www.dse.de/ef/social/gsaenger.htm (last visited Dec. 24, 2016); Marius Olivier & Edwell Kaseke *Informal Social Security and Formal Social Security: Developing an Integrative Approach*, Paper presented at the Southern African Development Community (SADC) Social Security Conference (Gaborone), (2004) (on file with author).

[117] See fn. 5, Para. 16.

Somewhat more explicit are some of the provisions of ILO Recommendation 204 of 2015 on the Transition from the Informal to the Formal Economy. The Recommendation stipulates among others that:[118]

> *7. In designing coherent and integrated strategies to facilitate the transition to the formal economy, Members should take into account the following:*
>
> *(a) ...*
>
> *(i) The need to pay special attention to those who are especially vulnerable to the most serious decent work deficits in the informal economy, including but not limited to women, young people, migrants, older people, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDS, persons with disabilities, domestic workers and subsistence farmers.*

In more general terms, Paragraph 15 of this Recommendation requires ILO Member States to promote the implementation of a comprehensive employment policy framework, based on tripartite consultations that may include as one of the elements the following: "[l]abour migration policies that take into account labour market needs and promote decent work and the rights of migrant workers."

The Recommendation suggests that countries should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage.[119] It makes a number of pertinent suggestions in the context of affirming that the transition from the informal to the formal economy is essential to achieve inclusive development and to realize decent work for all. These include among others the following:[120]

- The establishment of social protection floors, where they do not exist, and the extension of social security coverage; and
- Social protection schemes including cash transfers.

B. Human Rights Considerations

It is important to understand that informal economy workers also have a right to social security coverage, in terms of international human rights frameworks and, increasingly, also in terms of constitutional protection available in a growing number of African countries (*e.g.* Kenya and South Africa). This is an important element in the debate about extending social insurance coverage.

Of relevance — both legally and practically — is the protection embedded in the UN International Covenant on Economic, Social and Cultural Rights of 1966. Firstly, as mentioned, by far the majority of African countries, as is the case with China, have

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[118] ILO, Recommendation 204 of 2015 concerning the Transition from the Informal to the Formal Economy, Para. 7.

[119] Id. Para. 18.

[120] See Paras. 11 and 15(d) respectively.

ratified this UN instrument. Secondly, the right to social security, contained in Article 9 of the Covenant, has been comprehensively commented on by the UN Committee on Economic, Social and Cultural Rights in its 2008 General Comment No. 19.[121] The Comment requires of a ratifying country to cover informal economy workers (listing options and modalities in this regard), and expects of governments to respect and support social security schemes developed within the informal economy, such as micro-insurance schemes. Despite limited financial capacity, countries should consider lower-cost and alternative schemes to provide for marginalized groups, and should ensure the progressive inclusion of informal economy workers, according to the Committee.

C. Comparative Perspectives

Comparative developments indicate that several innovative attempts have been made, especially in recent years, to extend coverage to informal workers.[122] These may be relevant for (internal) migrant workers who work informally too. The attempts embrace both conceptual and institutional developments, as well as tailor-made design options. In addition, supportive arrangements, including a focus on stakeholder consultation, communication and an informal sector-friendly enabling framework, are important. These developments discussed below cover employment-related protection, *i.e.* that part of the system mainly captured by contributory arrangements, as well as social assistance provisions.

1. Conceptual Developments. — Some countries have addressed exclusion by redefining the concept of employee/worker in legislation governing social security coverage.[123] Developing countries are increasingly seeking innovative conceptualization to widen the application of social security beyond the traditionally envisaged groups. In India, for example, in an attempt to ensure social security provision for the huge informal economy, the Unorganised Workers' Social Security Act (Act 33 of 2008) has adopted a deliberately extensive notion of what is comprehended by the term "unorganised sector," and of who is intended to be an employer and a worker for the purposes of covering those embedded in a relationship of work in the informal economy.[124] Corresponding innovations are also found in some countries. In Tanzania, the Social Security (Regulatory Authority) Act, defines the "informal sector" as the sector that includes workers who work informally and who do not work in terms of an employment contract or another contract contemplated in the definition of employee.[125] The definitional

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[121] E/C.12/GC/19 of 4 February 2008 (adopted on Nov. 23, 2007).

[122] See in particular Olivier, fn. 112.

[123] See Olivier, fn. 112 at 220, on which the rest of this sub-paragraph is based.

[124] Unorganised Workers' Social Security Act (Act 33 of 2008), Section 2(k).

[125] Social Security (Regulatory Authority) Act 8 of 2008, Section 3.

extension could also occur on an industry basis. For example, in the beedi industry (hand-rolled cigarettes), the Beedi and Cigar Workers (Conditions of Employment) Act in India[126] covers a person employed directly or through any agency who is given raw materials by an employer or a contractor: In this way, outworkers and home workers are included.[127]

In a range of developing countries, labor laws (which often have social security consequences as well), achieve extended protection through a deliberate widening of the employee concept. In Swaziland, for example, an "employee" includes a person who works for pay or other remuneration not only under a contract of service but also "under any other arrangement involving control by, or sustained dependence for the provision of work upon, another person."[128] Similar developments have been discerned in Caribbean countries.[129]

Innovative conceptualization is an area that lends itself to significant further development. For example, adopting appropriate regulatory techniques to comprehensively cover supply chain scenarios would support extension of protection,[130] while a widening of the "trade union" membership concept in the legal systems of many developing countries (currently usually restricted to employees only) would enable trade unions to officially represent informal worker members.

2. Institutional Initiatives. — Note should further be taken of institutional initiatives which have occurred world-wide. Developing countries have been adopting a wide range of complementary mechanisms to effect coverage extension to excluded categories, impacting in particular on self-employed and informal workers.[131]

- Extending the reach of social assistance arrangements:[132] In the search for effective poverty alleviation and sustainable development measures, several middle-income countries have introduced large-scale non-contributory programs that

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[126] Beedi and Cigar Workers (Conditions of Employment) Act, 1996.

[127] Kamala Sankaran, *Flexibility and Informalisation of Employment Relationships*, in Fudge, McCrystal & Sankaran, fn. 106 at 44.

[128] Swaziland Industrial Relations Act 1 of 2000.

[129] Orville Taylor, *The Jamaican Labour Relations and Industrial Disputes Act (LRIDA): A Critical Assessment*, in Noel Cowell & Clement Branche eds. *Human Resource Development and Workplace Governance in the Caribbean*, Ian Randle Publishers (Kingston), at 426–450 (2003).

[130] See Lund, fn. 101 at 23–24. Important developments in this area have occurred in developed countries' jurisdictions, such as Australia, although even here the developments are still piecemeal and sector-focused, see Michael Rawling, *A Generic Model of Regulating Supply Chain Outsourcing*, in Chris Arup, Peter Gahan & John Howe et al. eds. *Labour Law and Labour Market Regulation*, Federation Press (Sydney), (2006).

[131] Yu-Wei Hu & Fiona Stewart, *Pension Coverage and Informal Sector Workers: International Experiences* (Working Papers on Insurance and Private Pensions, no. 31) OECD (Paris), (2009). See generally Olivier, fn. 112 as well as Olivier, Andrianarison & McLaughlin, fn. 20 at 81–82, on which the rest of this sub-paragraph is based.

[132] See Olivier, fn. 112 at 221.

transcend the concept of residual social assistance schemes, such as the *Bolsa Familia* and similar schemes in Brazil, *Opportunidades* in Mexico, and the social assistance grant system in South Africa, covering almost one-third of the population. Similarly, the Chinese *dibao* program is the largest unconditional cash transfer program in the world, reaching about 78 million individuals.[133] As indicated earlier in this contribution, the direct and distributional impact of these programs has reportedly been comprehensive, as they are invariably linked with complementary social welfare programs, and thus successfully address poverty at the individual and household levels, enhance educational, food and health care access and promote entrepreneurial activities.[134]

Elsewhere, especially in most Asian and African countries, until recently, social assistance interventions have been weakly developed. And yet, means-tested and universal programs have increasingly been established for certain risk areas, particularly pensions, for example, in Nepal and Namibia.[135] To this should be added the recent focus on introducing cash and conditional cash transfer schemes even in poor countries, often on a pilot basis, with a view to transforming these into scaled-up programs, for example in several sub-Saharan African countries.[136] There have also been some significant recent attempts to widen the funding base of means-tested programs in, for example, India, Bolivia and Lesotho.[137]

While these programs have the potential to serve as a bridge towards higher levels of protection via contributory arrangements, policy and operational frameworks which would allow beneficiaries to exit and graduate out of these programs, where that would be feasible, are weakly developed. Also, significant fiscal space exists to increase coverage through this mechanism.[138]

- Extension of existing schemes to the informal sector, and making participation compulsory: In some cases existing contributory schemes have been extended to include at least some informal worker categories. For example, unemployment insurance and labor law arrangements (impacting on social security as well) have been extended to

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[133] Gentilini, Honorati & Yemtsov, fn. 29 at 11.

[134] OECD, *Promoting Pro-Poor Growth: Social Protection*, OECD (Paris) at 24, 31 (2009); Ingrid Woolard & Murray Leibbrandt, *The Role of Cash Transfers in Reducing Poverty and Inequality in South Africa Over the Post-Apartheid Period*, unpublished paper produced for the National Planning Commission, Southern Africa Labour and Development Unit, University of Cape Town, (2011).

[135] Michael Samson, *Nepal Senior Citizens' Allowance: A Model of Universalism in a Low-Income Country Context*, in Sri Wening Handayani & Babken Babajanian eds. *Social Protection for Older Persons: Social Pensions in Asia*, Asian Development Bank (Manila), at 214–245 (2012).

[136] Victoria Monchuk, *Reducing Poverty and Investing in People: The New Role of Safety Nets in Africa*, World Bank (Washington D.C.), (2014); Olivier, Andrianarison & McLaughlin, fn. 20 at 30–31.

[137] See Olivier, fn. 72. See also Para. IIIB.1 above.

[138] As regards China and Africa, see Paras. IIB.1s and IIIB.1 above respectively.

domestic workers in South Africa.[139] Of particular importance is extension of coverage on a compulsory basis to the self-employed, in particular in several Latin American countries, but also in the Philippines.[140] Traditionally, in developing countries, there was little incentive for the self- and informally employed to join existing contributory schemes, which were accessible to them on a voluntary basis. In an attempt to increase coverage, certain Latin American countries have commenced making participation in these schemes compulsory, supported by incentives such as eligibility for/access to other social security benefits (for example, family allowances) and lowering the contribution rate for low-income self-employed persons.[141] As remarked by Mesa-Lago,[142] the few Latin American countries that require compulsory membership have better and more effective coverage.

- Embracing the whole informal economy: At a similarly high level, some governments have extended existing arrangements at once to the entire informal market. India[143] and Indonesia[144] are examples of countries that adopted overarching framework legislation aimed at extending social protection to the whole of the informal economy and to informal workers generally. Also, establishing universal schemes has become the hallmark of achieving extended coverage. Risk-category schemes based on a dedicated legal mandate and/or policy framework have been introduced, including universal health insurance schemes in Ghana, Rwanda and Thailand[145] among others and, as indicated

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[139] See Lund, fn. 101 at 26; Olivier, fn. 96 at 23–27.

[140] Regarding the Philippines, see Landis MacKellar, *Pension Systems for the Informal Sector in Asia* (Social Protection Discussion Paper, no 0903) World Bank (Washington D.C.), at 26–28 (2009). MacKellar remarked (at 27): "The new social security law enacted in 1997 mandated compulsory social security coverage of self-employed persons, regardless of their trade, business or occupation, with an income of at least 20.1 USD a month and not over 60 years old. As a result, the coverage of informal sector workers has tripled over the last 10 years, from 1.7 million in 1997 to 5.6 million as of September 2006. As of June 2006, out of the 26.5 million individuals that were registered with the social security system in the Philippines, around 21% were informal sector workers, up from 8.8 % in 1997."

[141] For example, in Chile the self-employed were meant to be fully mandatorily included in the national pension system by 2015, and in the health system as from 2016, see Carmelo Mesa-Lago, *Social Protection in Chile: Reforms to Improve Equity*, 147(4) International Labour Review, 394 (2008); see also Esteban Calvo, Fabio M. Bertranou & Evelina Bertranou, *Are Old-Age Pension System Reforms Moving away from Individual Retirement Accounts in Latin America?*, 39(2) Journal of Social Policy, 230 (2010).

[142] See Mesa-Lago, id. at 389.

[143] See Unorganised Workers' Social Security Act, fn. 124.

[144] National Social Security Law of Indonesia, Act 40 of 2004.

[145] Ghana is said to have achieved coverage of 67 percent and Rwanda 85 percent of the population, see Olivier, Andrianarison & McLaughlin, fn. 20 at 81. In Thailand, universal coverage has effectively been achieved, see Kannika Damrongplasit & Glenn A. Melnick, *Early Results from Thailand's 30-baht Health Reform: Something to Smile about*, 28(3) Health Affairs, 457–466 (2009); Olivier, fn. 96 at 27–29. Other African countries that have decided to go this route (although implementation may still be absent, or not fully realised) include Benin, Côte D'Ivoire, Gabon and Nigeria.

earlier in this contribution, comprehensive pension schemes have been introduced for rural and urban workers in China.[146] All of these schemes have achieved remarkable coverage in a short space of time.

Another example of this approach concerns the creation of targeted schemes for informal workers. The Ghana Informal Sector Fund[147] and the Kenya Mbao Pension Scheme[148] serve as useful examples, having attracted (also as the result of informal workers-sensitive design features) sizeable members in the few years since they were established.

- Adopting a sector-by-sector-approach: A further development concerns including informal workers sector by sector, usually on the basis of separate or dedicated schemes. Rather than attempting to solve the problem on an economy-wide basis, policymakers have chosen key sectors to initiate change. One example is the welfare funds established in India. They are financed through levies collected from selected employers and manufacturers,[149] and provide a range of benefits, including social security-related benefits such as medical care and maternity assistance. Also at a state level, a tax (cess) is imposed by state governments on the aggregate output of selected industries (for example, the Beedi Welfare Fund is financed by a tax on beedis).[150] Another prominent example is the establishment of gradualist sector-by-sector schemes embedding tailor-made solutions, provisions and prescriptions for particular groups of workers in the informal economy in Tunisia. This latter approach is among others based on the introduction of realistic income scales which determine the lowest income bracket (for purposes of contributions) relevant to the occupation of the insured person (physician, architect, shopkeeper, and so on) and the size of the firm or farm, supported by educational and promotional programs regarding the value of income protection.[151] Sector-based approaches have been used in

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[146] The voluntary rural and urban pension schemes were introduced in 2009 and 2011 respectively, and are (co-)funded by government via matching contributions. By the end of the first quarter of 2012, 376 million people were already participating in the two schemes, despite weak incentives to contribute above the minimum, see Mark C. Dorfman, Dewen Wang & Philip O'Keefe et al., *China's Pension Schemes for Rural and Urban Residents*, in Richard Hinz, Robert Holzmann & David Tuesta et al. eds. *Matching Contributions for Pensions*, World Bank (Washington D.C.), at 217–241 (2012); Jean-Michel Servais, *The New ILO Recommendation on Social Security*, 1(3–4) E-Journal of International and Comparative Labor Studies, 14 (2012).

[147] Informed by an extensive consultative process initiated by a presidential commission, the Fund provides for flexible contribution modalities and a two-tier tailor-made benefit arrangement, which ensures both long-term benefits and the opportunity to utilize funds for a range of core needs; in a short space of time 90,000 informal workers have joined the Fund, see Olivier, fn. 96.

[148] Amos Gitau Njuguna, *Critical Success Factors for a Micro-Pension Plan: An Exploratory Study*, 3(4) International Journal of Financial Research, 86–88 (2012).

[149] See Lund, fn. 101 at 23.

[150] See Olivier, fn. 96 at 15.

[151] Mohamed Chaabane, *Towards the Universalization of Social Security: The Experience of Tunisia* (Extension of Social Security, ESS Paper, no 4) ILO (Geneva), (2002).

South Africa's domestic worker environment.

- Adjusting approaches to the requirements of specific beneficiary groups: Narrowing the focus yet further, some governments or non-governmental institutions have focused their attention on specific groups in the informal economy. In some cases these approaches have a home-grown basis — as is the case with the Self Employed Women's Association (SEWA) in India, which arranges among others social security protection for its 1.33 million members in the informal economy. Operating both as a trade union and cooperative, and through its links with formal insurance schemes, SEWA has managed to provide its members with wide-ranging services including credit, training, child care, health care, pension, life insurance (death and disability) and insurance against loss of work equipment; it has become an influential actor at both the national and international level.[152] In Tanzania, a hybrid model is being implemented through the Community Health Fund (CHF), a voluntary government-introduced insurance-based hybrid scheme administered at district level and co-financed by the community (household) and the government.[153]

- Micro-health insurance schemes?: Micro-health insurance schemes exist in many (West) African and Asian countries. However, due to lack of scale and other reasons few of these arrangements seem viable, unless they are consolidated and eventually linked to national initiatives. This is apparent from envisaged interventions in Senegal, and the recent experience of Ghana and Rwanda.[154]

- Job-creation and labor market insertion programs: Almost all African countries have programs in place to create jobs and provide work, in particular to those who are unemployed (*e.g.* skills training; public works programs). Sometimes these programs include specific support of self-employment income-generating activities. However, as these programs are usually not linked to social security arrangements, they rarely imply the extension of social security coverage.

3. Tailor-Made Design Modalities. — Design characteristics, in the form of specialized contribution modalities, relaxed entitlement criteria and context-sensitive benefit packages, for the informal economy as a whole, or for particular sectors, have assisted in addressing the challenge as to why informal workers were unwilling, if not unable to participate in the past.[155] Contribution modalities include: (1) allowing informal workers to contribute to the extent of their ability at a frequency that suits their

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[152] See Lund, fn. 101 at 21–22; Supriya Routh, *Forms of Solidarity for Informal Workers in India: Lessons for Future?*, Paper presented at the Labour Law Research Network: Inaugural Conference, Barcelona, Jun. 13–15, 2013, at 15–17.

[153] Gemini Mtei & Jo-Ann Mulligan, *Community Health Funds in Tanzania: A Literature Review*, Ifakara Health Institute (Dar es Salaam), at 2 (2007).

[154] See Olivier, fn. 96 at 11, 29, 34–35; see also World Health Organization (WHO), *World Health Report 2010 — Health Systems Financing: The Path to Universal Coverage*, available at http://www.who.int/whr/2010/10_summary_en.pdf (last visited Jun. 26, 2017), at 12–14.

[155] See Olivier, fn. 96 at 15–17; Servais, fn. 146 at 4.

particular context and contributory capacity, for example, in Ghana and the Philippines;[156] (2) adopting realistic income baselines for the calculation of contributions, for example, in Tunisia; and (3) topping up small contributions of poor workers by way of government subsidies, for example in India[157] and Tanzania. Relaxed entitlement criteria allow informal workers to access benefits without complying with lengthy periods of contribution or other onerous conditions. Dedicated, context-sensitive benefit arrangements are addressing the key short- and long-term needs of informal workers. They may not include all the traditional social security benefit categories, but simultaneously provide for the use of benefits towards other core needs, such as education.

4. Supportive Arrangements: Consultation, Communication and an Enabling Framework. — Extending coverage to and enhancing social security-related protection of the self- and informally employed cannot be achieved in isolation. It is suggested that there are at least three areas of intervention that are required to ensure that a suitable context of coverage and protection is in place.

- Stakeholder consultation: Firstly, there is need to ensure that appropriate stakeholder consultation takes place, to determine concrete options — and consider challenges and solutions — in relation to extending coverage to the self- and informally employed and developing suitable protection modalities for them.

Relevant options, dealing among others with appropriate contribution rates and payment modalities, eligibility criteria, and dedicated benefit regimes, have to be considered and, once revised and adopted, submitted for implementation. World-wide experience has shown that successful coverage extension and suitable forms of protection in social security terms for those who work as self-employed and informally have been preceded by thorough consultation with stakeholder groups and institutions.

Also, while consultation would have to involve the targeted groups themselves, at times even at grass-roots level, the consultative team itself has to have a high-level status,

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[156] Regarding Ghana, see fn. 147 above. In the Philippines, in addition to compulsory arrangements, the Philippines Social Security System has adopted several flexible approaches to meet the requirements of informal sector workers who do not have access to formal banking arrangements and who are only able to contribute irregularly, by introducing the following programs and (in the process) partnering with organized informal sector groups (ISGs) and Local Government Units (LGUs), see Josephine Anne E. Mines, *Moving Towards Inclusive Growth: The Philippine Social Security System*, (Philippine Social Security System, 2015), available at https://www.sss.gov.ph/sss/DownloadContent?fileName=2015_Updated_ISSA_Report_on_ISCoverage_FINAL.pdf (last visited Dec. 26, 2016): (1) AlkanSSSya Program for the self-employed in the services sector;(2) Servicing and/or Collecting Partner Agent Agreement for cooperatives and microfinance institutions; (3) Contribution Subsidy Program for farmers and workers in the agricultural sector; (4) Coverage Program for government job order and contractual (JO/C) workers; and (5) MuniSSSipyo-Collect Program for unbanked areas or provinces.

[157] Both the Union Government and State Governments in India contribute comprehensively to top up small informal worker contributions in relation to social security schemes which focus on including informal workers, see among others Dorfman, Holzmann & O'Keefe et al., fn. 10 at 99, 125.

and preferably reflect stakeholder group representation. In some countries the introduction of suitable arrangements for covering the informally employed was preceded by a thorough consultative process conducted by a presidential[158] or government-appointed[159] commission.

- Communication: Secondly, as supported by evidence emanating from other countries where the self- and informally employed have been included in social security schemes, there has to be thorough communication of envisaged new arrangements.

In particular, those who are affected by the new arrangements, including the self-employed, individual operators, small employers, other providers of work, and informally employed workers, as well as their professional and/or representative organizations have to be properly informed. Given the national relevance of such arrangements, awareness-raising interventions targeting the general public also have to be introduced.

- Enabling framework: Thirdly, extending coverage and enhancing protection would require that a proper enabling framework has been established and is operational. The meaningful participation of the self- and informally employed implies that they should be supported to do so — from both a broader policy and operational perspective they have to be strengthened and enabled.

Among others, steps that would enhance the ability, in particular of those operating and working in the informal economy, to contribute to and access the social security system have to be considered and introduced. Fixing the minimum wage at a level that would enable them to contribute would be one such matter to be considered.

In addition, those operating in the informal sector are in need of access to credit, tailored banking services, transport, training and skills development packages, mentoring and appropriate business opportunities. Some of these matters are currently being addressed in, for example, the Indian context — through among others the linking of the so-called Aadhaar card facility to bank accounts in order to enhance financial inclusion. Also, overcoming supply- and demand-side constraints, and access to markets are some of the core priorities to be addressed.

In essence then, government and other stakeholders would have to play a crucial promotional and developmental role to support those involved in the informal economy/sector and enhance their capacity to participate meaningfully in the reformed social security framework. Of course, it is necessary to consider and weigh up costs and benefits. A government has to prioritize actions and spending and ask where the attention should most crucially be focused.

The AU Social Policy Framework specifically recommends the facilitation of employment creation with access to training, credit, advisory services, appropriate

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[158] *E.g.* Ghana.

[159] *E.g.* India.

legislation, productive inputs, social protection, and improved technology.[160]

CONCLUSION

Significant developments with considerable impact: The two social protection areas of concern discussed in this contribution, *i.e.* old age provisioning and the extension of social security to informal economy workers, have witnessed crucial developments in both China and Africa, affecting large numbers of beneficiaries and implying significant system development.

Differential approaches to old age provisioning and extended coverage of informal economy workers in China and Africa: It would appear that China has, in particular as far as the area of retirement is concerned, a leading or spearheading advantage as regards innovation concerning several of the measures to improve social security provision for older people. Despite many remaining challenges, China has succeeded in dramatically increasing the reach and effect of retirement-focused social security measures. Among others, this has been achieved via the whole scale expansion of broad-based rural and urban schemes. On the contrary, the general picture in Africa is still one of fragmentation and dualism. There is little interfacing between contributory and non-contributory arrangements, with the large majority of the aged in Africa still being left at the margins of social security, due to absent or inadequate coverage and the generally weakly non-contributory social assistance arrangements.

As regards extended social security coverage of informal economy workers, and drawing upon experiences in Latin America and Asia, the variety of approaches increasingly evident on the African continent provide interesting possibilities for increased coverage. Yet, despite the vast majority of workers in Africa being affected thereby, there is little evidence of systematic and streamlined approaches: African countries are grappling with the need to introduce truly national and comprehensive approaches. As far as China is concerned, and unlike Africa, specifically targeting the informal economy from a social security perspective seems to have received little attention until now. Yet, the adoption of integrative approaches and a deliberate attempt to increase the reach of existing measures to capture the whole population hold much promise.

Redefining the role of the State: Furthermore, in both China and Africa, there is increasingly an appreciation of the core or leading role of the State in the provisioning of social security. Providing direct social security support for those unable to care for themselves, usually in the form of cash transfers and formalized social assistance programs, has become a hallmark of State involvement in both Africa and China. And yet, it has increasingly been understood that it is equally important for the State to establish appropriate social protection frameworks and supervisory mechanisms, and to optimally

[160] AU Social Policy Framework for Africa (CAMSD/EXP/4(I), 2008), at 16.

extend contributory arrangements to those who are able to contribute, even to the extent of implying government co-contribution. From an overall perspective, the underlying imperative informing State involvement has matured in both Africa and China, given the stronger emphasis on social development considerations and, as it were, the existence and nurturing of a social contract with the people.

Alignment with international standards and learning from comparative experience: International standards provide a well-developed framework of guiding and directing principles for the enhancement of social security provisioning for older people and, more recently, also for those involved in the informal economy. Much can be gleaned from these standards and their impact and operationalization, and the way in which countries, also those in the developing world, have attempted to deal with the challenges of proper regulation and coverage.

In particular as far social security coverage extension to workers in the informal economy is concerned, the extensive tapestry of models and examples in comparative jurisdictions provides ample food for thought and careful consideration. An alignment with ILO Recommendation 204 of 2015 on the Transition from the Informal to the Formal Economy may indeed be of value. As noted in this contribution, the Recommendation suggests that countries should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage.[161] Pertinent suggestions are made by the Recommendation in the context of affirming that the transition from the informal to the formal economy is deemed essential to achieve inclusive development and to realize decent work for all.[162] The Recommendation further recommends that countries should formulate and implement a national employment policy in line with the ILO Employment Policy Convention, 1964,[163] and make full, decent, productive and freely chosen

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[161] See Para. VIA above; Recommendation 204 of 2015 concerning the Transition from the Informal to the Formal Economy, fn. 118, Para. 18.

[162] Id. at Paras. 9–11. In addition to the issues indicated in Para. VIA above, Paras. 9–11 suggest the following measures:

- Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units.
- Members should ensure that an integrated policy framework to facilitate the transition to the formal economy is included in national development strategies or plans as well as in poverty reduction strategies and budgets, taking into account, where appropriate, the role of different levels of government.
- This integrated policy framework should address:
  - the promotion of strategies for sustainable development, poverty eradication and inclusive growth, and the generation of decent jobs in the formal economy;
  - the establishment of an appropriate legislative and regulatory framework;…
  - the promotion of entrepreneurship, micro, small and medium-sized enterprises, and other forms of business models and economic units, such as cooperatives and other social and solidarity economy units;…
  - income security, including appropriately designed minimum wage policies;…

[163] Employment Policy Convention No. 122 of 1964.

employment a central goal in their national development and growth strategy or plan.[164]

Building on equal and equitable outcomes: Important steps have been taken in both China and in Africa to support and implement more equitable, equal and egalitarian social security outcomes in concerned countries. This is evident from, among others, the movement to ensure reduction of state-funded pensions for retired civil servants; the creation of schemes to support rural and informal economy workers; and governments' contribution to the welfare of vulnerable categories of persons and workers, including older people and informal economy workers (and their families). Yet, it is clear that more needs to be done in this regard.

Firstly, there is need to create a framework, if not a universal system, to cover both informal and rural workers, on the one hand, and urban and formally employed workers, on the other hand. A range of modalities may have to be considered in this regard, in addition to truly universal schemes — among which the need for enhanced government contribution (on behalf and/or in respect of these vulnerable categories) to employment-based social insurance schemes for retirement purposes and in informal work contexts.

Also, secondly, the disparate genderized, disability and nationality (discrimination) impact of the legal, institutional and operational arrangements in relation to contributory schemes has thus far received little attention in the design and reform of these schemes (despite a number of notable reforms sensitive to these considerations in certain countries).[165] For example, little provision exists for special arrangements for persons (in particular females) who have to exit the labor market for family-related reasons, inadequate provision is made for paternity leave/benefits, and appropriate protection for persons with disabilities is largely lacking. Furthermore, discriminatory legal provisions and policy frameworks as well as the lack of proper migration management policies and

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[164] Examples of the components of a comprehensive employment policy framework are offered, including:

- labour market policies and institutions to help low-income households to escape poverty and access freely chosen employment;
- social protection schemes including cash transfers;
- public employment programs and guarantees;
- enhanced outreach and delivery of employment services to those in the informal economy;
- education and skills development policies that support lifelong learning, respond to the evolving needs of the labour market and to new technologies, and recognise prior learning such as through informal apprenticeship systems, thereby broadening options for formal employment;
- comprehensive activation measures to facilitate the school-to-work transition of young people, in particular those who are disadvantaged, such as youth guarantee schemes to provide access to training and continuing productive employment;
- measures to promote the transition from unemployment or inactivity to work, in particular for long-term unemployed persons, women and other disadvantaged groups; and
- relevant, accessible and up-to-date labour market information systems.

[165] See Olivier, Andrianarison & McLaughlin, fn. 20 at 29.

cross-border social security arrangements impact negatively on the position of internal migrants and non-citizens in social security, even when migrating within countries concerned or to other countries.

Need for a policy-based and statutorily-mandated social security framework: Despite developments in the design of tailored policies, in many countries there is still need for the creation of a fundamental policy framework to give direction and guidance and to set overarching objectives and outcome-based goals — for improved coverage of older persons and informal economy workers, and their families. Similarly, a stronger legislative basis is required, in particular as far as social assistance arrangements are concerned, in relation to older persons, and programs affecting informal economy workers and their families. Appropriate legislative frameworks should be enacted — to provide a legal basis or mandate for government and other role-players to be involved; to ensure rights-based protection of these vulnerable categories of persons; and to enable courts to adjudicate on the basis of clearly formulated provisions.

Addressing funding gaps: In spite of a high overall contribution rate in relation to workers participating in the urban public pension scheme in China, funding arrangements are still insufficient. Inadequate funding is also characteristic of several other social security contexts, including informal worker coverage. Depending on the specific group being affected (*i.e.* older persons/workers; informal economy workers and their families), and the reason for the funding shortfall, appropriate steps are needed in Africa and China to deal with this effectively. These steps could include:

- The adoption and/or strengthening of a multi-pillar approach comprising state-provided social assistance support/cash transfers; insurance- and contributory-based social insurance schemes; and voluntary top-up arrangements for those who can afford this.
- Taking steps to specifically address underfunded public pension schemes, as discussed earlier in this contribution.
- Generally, the consideration of a complementary range for funding options available to governments — as reflected on earlier in this contribution.
- Addressing the underlying factors which (help to) cause the funding shortfalls — including dealing decisively with mismanagement and weak governance.

Suitable arrangements aimed at enhancing social security for workers in the informal economy and their family members: In this regard the following measures may have to be considered

- **Consider the needs and circumstances of those in the informal economy and their families:** In building and maintaining national social protection floors within their social security system and facilitating the transition to the formal economy, countries should pay particular attention to the needs and circumstances of those in the informal

economy and their families.[166] Coverage of social insurance should progressively be extended to those in the informal economy, and administrative procedures, benefits and contributions should be adapted in accordance with the contributory capacity of those in the informal economy.[167]

- **Learn from the comparative experience and examples and develop a policy, legal and communication framework:** It is advisable to consider the vast and nuanced comparative experience. Approaches to be adopted for the Chinese and African contexts need to be captured in both the policy and legislative framework associated with the reform of the social security system of the country concerned; and have to be clearly communicated to stakeholders concerned, the workers/persons directly affected thereby, and the general public.

- **Develop a context-sensitive framework for extension of coverage to informal economy workers:** It makes sense to capture informal and self-employed workers in a universal framework, alongside formal sector workers, and thereby to consolidate the range of coverage modalities applicable to these workers, to the extent that coverage is indeed prevalent. Even so, it is necessary to also bear in mind the particular context of informal workers or at least certain categories of these workers. For example, it may be appropriate to develop a flexible benefit package regime that would take account of the particular needs of (certain) workers.

It may also be necessary to develop particular contribution modalities, and ways to determine — and/or deem — the income earned by those who work informally or as self-employed persons. Again, the international experience may be of value. Furthermore, care should be taken to design entitlement criteria in a way that does not exclude these workers/persons. For example, to require regular contributions over a lengthy period of time to ensure access to a long-term benefit (such as a retirement benefit) may not work for many informal workers/self-employed persons. Innovative ways to deal with such a scenario have to be developed — for example, by allowing these workers/persons to contribute whenever they are able to do so (*e.g.* to accommodate seasonal and inter-sectoral workers) and/or to ensure a government contribution in the case where individual capacity may be lacking.

Address challenges relating to coverage modalities: Finally, extension of coverage to the informal framework is associated with several challenges that would need to be resolved. One of these relates to identifying the workers concerned and their registration. Another concerns the determination of their income, as indicated above. A third challenge has to do with the need to involve, consult and liaise with these workers/persons — in the wake of weak representation and voice.

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[166] See Recommendation 204 of 2015 concerning the Transition from the Informal to the Formal Economy, fn. 118, Para. 19.

[167] Id. Para. 20.